

**FILED**

**United States Court of Appeals  
Tenth Circuit**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

**January 16, 2014**

**Elisabeth A. Shumaker  
Clerk of Court**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LIZANDRO HUERTA BENITEZ,

Defendant - Appellant.

No. 13-4166  
(D.C. No. 2:12-CR-00291-RJS-3)

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**ORDER**

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Before **BRISCOE**, Chief Judge, **LUCERO**, and **HOLMES**, Circuit Judges.

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The government has moved to dismiss this appeal as untimely. Upon consideration of the motion, Mr. Benitez's pro se letter in response, and the file as a whole, the court concludes that the appeal is untimely.


Mr. Benitez seeks to appeal from the judgment entered in his criminal case on June 5, 2013 and/or the amended judgment entered on June 20, 2013. His notice of appeal was due within 14 days of the entry of judgment - on or before July 5, 2013 at the latest. It was not filed until November 12, 2013 - outside the 14-day period prescribed by Fed. R. App. P. 4 (b)(1)(A), and also outside any permissible extension period. *See* Fed. R. App. P. 4 (b)(4) (extension may not exceed 30 days from the expiration of the prescribed time for appeal).

The timeliness requirements of Fed. R. App. P. 4 (b) are inflexible claim processing rules. *See United States v. Garduño*, 506 F. 3d 1287, 1291 (10th Cir. 2007). Accordingly, the government's motion to dismiss is granted.

To the extent Mr. Benitez is claiming that his attorney failed to file a timely appeal on his behalf, he may raise this claim in a timely § 2255 proceeding. *See Roe v. Flores-Ortega*, 528 U.S. 470, 484, 486 (2000).

**APPEAL DISMISSED.**

Entered for the Court  
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read 'C. Van Coney', with a long horizontal stroke extending to the right.

by: Christine Van Coney  
Counsel to the Clerk